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SUBJECT: FRANCE AND IPR - OPPORTUNITIES FOR ENGAGEMENT

¶1. (SBU) Summary: As France prepares for its 2008 EU Presidency, President Sarkozy is placing a high priority on Intellectual Property Rights, pushing forward several initiatives that could influence the global evolution of online IPR. The Olivennes Commission Report on digital piracy, commissioned by Sarkozy, made a number of far-reaching recommendations on combatting counterfeiting and protecting copyrights in the digital marketplace. The French government continues to be especially attentive to the interplay between technology and culture and its consequences for France. France's EU presidency provides an opportunity to ratchet up engagement with France on our IPR issues. End Summary.

"OLIVENNES" REFORMS

¶2. (U) To address what he called the challenge of the "protection of cultural works in the new networks of communication," President Sarkozy in August 2007 appointed Denis Olivennes, CEO of the leading French entertainment retailer FNAC, to head a committee to meet with entertainment producers, copyright holders, and Internet service providers (ISPs). The Committee focused on three areas: fighting internet piracy, developing a model for legal online purchases of music and movies, and helping the French entertainment industry to adapt to the digital marketplace. The Olivennes committee completed its work at the end of November and issued a series of proposals to combat internet piracy and stimulate the growth of a legal digital music and movie market.

¶3. (U) Olivennes proposed denying internet access to repeat offenders who illegally download material. The report calls for the establishment of a new enforcement authority with the authority to issue alerts, warnings and finally suspend or terminate internet service for individuals suspected of illegal downloading. This authority would also have the power to sanction ISPs that fail to comply with its injunctions. According to Culture Minister Christine Albanel, over "a billion music and movie files were illegally shared in France in 2006."

¶4. (SBU) Olivennes has proven adept at mixing technology and culture and bringing together disparate constituencies and his report has received widespread support. Sarkozy welcomed his proposals in a speech calling for "a civilized internet." The report is under consideration in the French parliament with a number of the recommendations, including new "filtering" rules that will impact ISPs likely to enter into force in 2008 either by decree or new legislation.

¶5. (U) Olivennes' recommendations have generated headlines globally, with media reports terming his report "radical" and "revolutionary." John Kennedy, head of the association representing the recording industry worldwide (IFPI), termed the Olivennes report "as the single most important initiative yet to help win the war on online piracy." What is unprecedented is Olivennes' success in forging an

agreement between film and music rights holders and technology and service providers, two groups that have not always seen eye-to-eye on combating illegal downloads. However, the French consumer organization, "UFC-Que Choisir," has criticized the proposal for creating a new internet policeman, calling it a threat to civil liberties.

DRM DEBATE: INTEROPERABILITY AND SOURCE CODES

¶16. (U) A Technical Measures Regulation Authority (TMRA), created in April 2007 subsequent to passage of France's Digital Copyright law, is now in place, though its future role, under any changes that may flow from the Olivennes report, is not completely clear. The TMRA was established to regulate issues relating to the "mandated" interoperability of digital rights management (DRM) systems, as well as rights to copy original works for private use. It has yet to hear a single case.

¶17. (SBU) The Business Software Alliance (BSA) has filed a formal complaint with the European Commission in Brussels regarding the French law. According to BSA's complaint, the law, in particular its potential for mandated interoperability, is inconsistent with France's obligations under community rules. Specifically, BSA claims it impedes the free movement of services in contravention of Article 49 of the EC Treaty and disadvantages the activities of service providers established outside of France by imposing restrictions on companies using DRMs that are both unjustified and disproportionate. BSA also comments that the French law reportedly has not been formally "notified" to the EC, which contravenes EU regulations. Apple Inc has filed a similar complaint with the French State Council, which reviews the legality and constitutionality of French decrees and legislation. The Council has not yet taken any action on the complaint.

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¶18. (SBU) The GOF intends to complete the implementation of the 2006 Digital Copyright Law by issuing a decree related to the potential requirement of disclosure of source codes to a government authority (Article 15.) We understand that the draft decree will be circulated within the French government by the end of February and then forwarded to the French State Council for approval. The decree could impose source code disclosure obligations or new testing requirements on technical protection measures used in DRM software.

The Year Ahead

¶19. (SBU) The next twelve months provide important opportunities to work with the French in advancing our IPR agenda, both bilaterally and regarding IPR issues globally. We are making some progress on France's Digital Copyright law working with the newly established TMRA ("Autorite de Regulation des Mesures Techniques") and with U.S. industry to discuss means of protecting against spyware and other French concerns without requiring the sharing of source codes.

¶110. (SBU) The French have expressed support for the Trans Atlantic Economic Council (TEC) and are looking for headline issues to address during the French EU presidency. Since France will be hosting an EU-China summit during its Presidency, we should consider initiating a TEC dialogue on key third country and strategic issues to include IPR protection and trade.

¶111. (SBU) The French government remains very interested in the proposed Anti-Counterfeit Trade Agreement (ACTA). It agrees with U.S. objectives but believes discussions thus far have been too Brussels-oriented. France also continues to advocate inclusion of at least a limited number of developing nations in ACTA, as well as some G-8 input into the process. A more active dialogue with the French on ACTA could help to ensure that we continue to make progress on these negotiations during the French EU Presidency.

EMBASSY IPR CONFERENCE

¶112. (SBU) IPR - in particular how it relates to the internet and new technologies - is a personal interest of President Sarkozy and a high priority for his government. French initiatives on IPR and the

digital economy have the potential to be precedent-setting globally, with significant consequences for the U.S. Given strong French interest in IPR issues, and to encourage further dialogue between U.S. and French government and business leaders, Embassy Paris is planning to organize a one-day conference tentatively entitled: "Counterfeit and Copyright in the Digital Age" in early June 2008. Embassy Paris will coordinate with relevant Washington agencies and the Department as we move forward on the conference.

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